

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

THE GROUND ROUND INDEPENDENT
OWNERS COOPERATIVE, LLC,

Plaintiff,

- vs. -

Civil Action No.: 05-CV-10780-NMG

CHARLES WHITMAN a.k.a. Chuck
Whitman, C.T.W. DEVELOPMENT
CORPORATION, RESTAURANT
CONCEPTS UNLIMITED CORPORATION,

Defendants.

REQUEST FOR ISSUANCE OF A NOTICE OF DEFAULT

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MASSACHUSETTS:

The Ground Round Independent Owners Cooperative, LLC (the "IOC"), requests that the Clerk of this Court issue a notice of default against Defendant Charles Whitman a.k.a. Chuck Whitman pursuant to Fed. R. Civ. P. 55(a).

This request is based on the Affidavit of Juan Alexander Concepción, incorporated herein by reference, which shows:

1. Mr. Charles Whitman was duly served with the summons and complaint on April 28, 2005.
2. The Return of Service filed with this Court on May 3, 2005 establishes that service of process was proper pursuant to Fed. R. Civ. P. 4. A true and accurate file-stamped copy of the Return of Service is attached to the Affidavit of Juan Alexander Concepción as Exhibit "A."
3. Mr. Whitman has failed to timely plead or otherwise respond to the complaint.
4. The applicable time limit for responding under Fed. R. Civ. P. 12 has expired.

5. Upon information and belief, Mr. Charles Whitman is not a minor or an incompetent person.

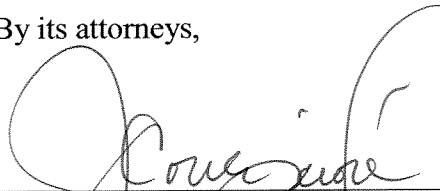
WHEREFORE, the IOC requests that the Clerk of this Court issue a notice of default against Mr. Charles Whitman pursuant to Fed. R. Civ. P. 55(a).

Signed under penalties of perjury.

Respectfully Submitted,

THE GROUND ROUND INDEPENDENT
OWNERS COOPERATIVE, LLC,

By its attorneys,

A handwritten signature in black ink, appearing to read 'Juan Alexander Concepción', is written over a horizontal line.

Juan Alexander Concepción, Esq. (BBO # 658908)
NIXON PEABODY LLP
100 Summer Street
Boston, MA 02110-2131
(617) 345-1000

Craig R. Tractenberg, Esq. (PA I.D. # 34636)
(Admission *Pro Hac Vice* to be filed)
NIXON PEABODY LLP
1818 Market Street, 11th Floor
Philadelphia, PA 19103
(215) 246-3525

Dated: May 19, 2005

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

THE GROUND ROUND INDEPENDENT
OWNERS COOPERATIVE, LLC,

Plaintiff,

- vs. -

Civil Action No.: 05-CV-10780-NMG

CHARLES WHITMAN a.k.a. Chuck
Whitman, C.T.W. DEVELOPMENT
CORPORATION, RESTAURANT
CONCEPTS UNLIMITED CORPORATION,

Defendants.

**AFFIDAVIT IN SUPPORT OF PLAINTIFF'S REQUEST FOR ISSUANCE OF A
NOTICE OF DEFAULT**

Juan Alexander Concepcion, being duly sworn, deposes and states:

1. My name is Juan Alexander Concepción.
2. I am an associate with the law firm of Nixon Peabody LLP, 100 Summer Street, Boston, Massachusetts 02110 and am duly admitted to practice law in the Commonwealth of Massachusetts and before this Court. I am fully competent to make this affidavit and I have personal knowledge of the facts stated herein.
3. I am an attorney of record for Plaintiff The Ground Round Independent Owners Cooperative, LLC, in this action.
4. On April 20, 2005, I caused copies of the summons and complaint in this action to be delivered to Richard S. Fabian, Process Server in the State of Ohio. Pursuant to Fed. R. Civ. P. 4, Mr. Fabian properly served the summons and complaint on Mr. Charles Whitman on April 28, 2005 and certified that fact to this Court in a Return of Service, dated April 28, 2005. The

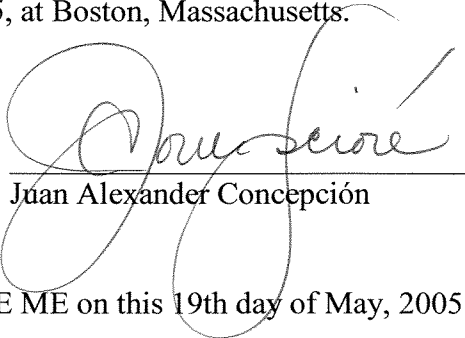
Return of Service was duly filed with this Court on May 3, 2005. A true and accurate file-stamped copy of the Return of Service is attached to this Affidavit as Exhibit "A."

5. Mr. Charles Whitman has failed to timely serve or file an answer or otherwise respond to the complaint in this action.

6. Under Fed. R. Civ. P. 12(a)(1)(A), the time limit for responding to the complaint has expired, and the time for Mr. Charles Whitman has not been extended by any stipulation of the parties or any order of the Court.


7. Upon information and belief, Mr. Charles Whitman is not a minor or an incompetent person.

Signed by me on this 19th day of May, 2005, at Boston, Massachusetts.



Juan Alexander Concepción

SUBSCRIBED AND SWORN TO BEFORE ME on this 19th day of May, 2005.



Deborah Svirtunas
Notary Public in and for the Commonwealth of
Massachusetts
Commission expires: December 17, 2010



UNITED STATES DISTRICT COURT

District of Massachusetts

The Ground Round Independent
Owners Cooperative, LLC

SUMMONS IN A CIVIL CASE

V.

Charles Whitman a/k/a Chuck Whitman,
CTW Development Corporation,
Restaurant Concepts Unlimited
Corporation

CASE NUMBER:

05c 10780 NMG

TO: (Name and address of Defendant)

Charles Whitman a/k/a Chuck Whitman
945 Windham Court, Suite 5
Boardman, OH 44512

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Juan A. Concepcion
Nixon Peabody LLP
100 Summer Street
Boston, MA 02110

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.



CLERK

DATE

(By) DEPUTY

AO 440 (Rev. 10/93) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and complaint was made by me ⁽¹⁾	DATE 4/28/05 10:00 AM	
NAME OF SERVER (PRINT) Richard S. Fabian	TITLE Process Server	
<i>Check one box below to indicate appropriate method of service</i>		
<input checked="" type="checkbox"/> Served personally upon the third-party defendant. Place where served: <u>Westford Development</u> <u>off RT. 224 and Tippecanoe Ave. in Boardman, Ohio.</u> <u>Mr. Whitman is developing this property.</u>		
<input type="checkbox"/> Left copies thereof at the defendant's dwelling-house or usual place of abode with a person of suitable age and discretion then residing therein. Name of person with whom the summons and complaint were left: _____		
<input type="checkbox"/> Returned unexecuted: _____ _____ _____		
<input type="checkbox"/> Other (specify): _____ _____ _____		
STATEMENT OF SERVICE FEES		
TRAVEL \$183.52	SERVICES \$187.50	TOTAL \$371.02
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on <u>April 28, 2005</u> <u>R.S. Fabian</u> <small>Date</small> <small>Signature of Server</small></p> <p style="text-align: center;">174 North Park Ave. Suite 3 Warren, Ohio 44481</p> <p style="text-align: center;"><small>Address of Server</small></p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.